IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Cr.Appeal No.524 of 1999

Reserved On: December 4, 2006.
Date of decision: December 21, 2006.

State of Himachal Pradesh Appellant.

Versus

Churu Ram Respondent.

Coram

The Hon'ble Mr. Justice V.K.Ahuja, J.
The Hon'ble Mr. Justice
Whether approved for reporting[1]?

For the appellant: **Mr Ashutosh Burathoki, Addl. Advocate General.**

For the respondent: **Mr. Ramakant Sharma, Advocate.**

V.K.Ahuja, J.

This is an appeal filed by the appellant/State of Himachal Pradesh against the judgment dated 27.5.1999 of the Court of learned Sub Divisional Judicial Magistrate, Karsog, Distt. Mandi vide which the respondent was acquitted of the charge under Sections 41 and 42 of the Indian Forest Act.

Briefly stated, the facts of the case are that on 4.5.1996, forest officials raided the house of accused at Village Sanarli and the accused admitted having brought wood without a valid permit which was issued to him as T.D. The accused handed over 21 logs of Deodar to the forest officials. It is further the case of the prosecution that on 29.4.1996, forest department also recovered 4 logs of wood from the saw mill of one Sant Ram which were given to him by the accused. These total logs of wood were recovered and were taken in

[1] Whether the reporters of Local Papers may be allowed to see the Judgment?

possession and after affixing hammer mark, were given on Sapurdari to one Hari Ram of Village Sanarli. It is further the case of the prosecution that total 45 logs of wood were allotted to accused as T.D., 25 were transported to Village Sanarli and were recovered by the forest officials, while 13 logs of wood were handed over to one Tilak Raj. The case was filed before the learned trial Court who tried the case under Sections 41 and 42 of the Indian Forest Act resulting in acquittal of the accused.

I have heard Shri Ashutosh Burathoki, the learned Additional Advocate General for the State and Shri Ramakant Sharma, Advocate for the respondent and have also gone through the record of the case.

The submissions of the learned Additional Advocate General were that the prosecution case stands proved from the statements of the witnesses in regard to the recovery of timber without any permit, but the learned trial Court had wrongly acquitted the respondents on the basis of some contradictions in the statements of the prosecution witnesses and those findings are liable to be reversed. On the other hand, the learned counsel for the Respondent has supported the impugned judgment for the reasons given therein.

Now, coming to the evidence led by the prosecution. PW-1 Gurdas, Forest Guard, stated that he had gone with DFO and other forest officials to the house of accused and on search of his house, 21 scants of Deodar of T.D. were recovered and that 4 logs had already been recovered by one Jiwa Nand. He stated that Churu Ram had got T.D. from another Mohal and a report was prepared. He is not aware about the grant of T.D. in favour of the accused and from which village he had got the same.

PW-3 Sant Ram has stated that forest officials came to the house of the accused and 23-24 scants of Deodar were lying outside and a damage report and confessional statement was prepared by the forest officials. He only signed on the report and no recoveries were effected in his presence and he is not aware from where these scants had been brought.

PW-4 Devi Ram stated that forest officials came to the house of the accused and 21 scants were recovered with T.D. hammer mark and a damage report and confessional statement was prepared by the forest officials which was prepared by him. He stated that this wood was recovered from the road near the house of the accused which is contrary to the prosecution story that these were recovered from his house. He only saw the wood lying outside. He admitted that he is working in the forest department as a work charge employee. PW-5 Tula Ram has stated that accused had given a statement that he had been granted two trees in T.D. and had brought it for sawing purpose to Village Sanarli. He also admitted that he is working in the forest department since long.

PW-7 Duni Chand B.O. has stated that the raid of the house of accused was conducted and 21 scants were recovered from the house of the accused and 4 scants were recovered by the Guard from the saw mill at Village Sanarli. He stated that T.D. had been granted to accused in Village Narethi which was to be used in the same village. He admitted that there is no saw mill at Narethi, the village of the accused and all the persons take their wood to Sanarli saw mill. He also admitted that Sanarli is the nearest village from Narethi Village where there is a saw mill. PW-9 Jai Singh stated similarly in regard to recovery of 21 scants from the house of the

accused. He admitted that all the wood were having T.D.hammer mark. He denied that the accused had shown the permit. He admitted that there was a dispute in between the D.F.O. and Mohinder Kumar but denied that the wood was kept by the forest officials in the house of the accused. He admitted that the path to Narethi is through village Sanarli and he is not aware if there is any saw mill at Village Sanarli which fact was admitted by other witnesses.

There is no evidence in regard to recovery of 13 sleepers from one Tilak Raj belonging to accused as was the prosecution case. PW-10 Attar Chand, B.O. had proved that he had given two trees to accused in T.D. vide permit Ex.PW-10/A. He admitted that the accused is from Village Narethi where there is no saw mill and the timber had to be brought to Village Sanarli which is the nearest saw mill. This witness from the forest department, who is posted as B.O. clearly stated that the accused had not unlawfully cut any tree since he had been issued permit on T.D. and in case the timber is sanctioned in Village Narethi that has to be taken to Sanarli saw mill and the permit is given by the forest department for taking it there. This witness from the forest department had admitted that there was a valid permit in the name of the accused and he had taken the wood to Village Sanarli since there is no saw mill at Narethi village.

From the above discussion, it is clear that the prosecution had miserably failed to prove that the accused was not having a valid permit for the timber allegedly recovered from his house and from the Saw mill, and there is nothing on record to show that a separate permit was required for taking the timber to a nearby saw mill, which was the nearest saw mill from the village of the accused. The learned trial Court has referred to the contradictions and infirmities in the statements of the

prosecution witnesses and there is nothing on record to establish that the conclusions arrived at by the learned trial Court were perverse in nature calling for interference by this Court.

From the above discussion, it is clear that the appeal deserves to be dismissed and it is accordingly dismissed. Bail bonds furnished by the respondent are discharged.

December 21, 2006 (V.K.Ahuja),J.
(SDS)